

**In re: DIAMOND FRUIT & VEGETABLE EXCHANGE, INC.
PACA Docket No. D-01-0033.
Decision Without Hearing by Reason of Default.
Filed January 18, 2002.**

PACA – Default – Payment, failure to make, prompt – Late payment of sellers.

Clara Kim, for Complainant.
Respondent, Pro se.

Decision and Order issued by Dorothea A. Baker, Administrative Law Judge.

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*) (hereinafter referred to as the “Act” or “PACA”), instituted by a complaint filed on September 21, 2001, by the Associate Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The complaint alleges that during the period June 2000 through February 2001, Respondent Diamond Fruit & Vegetable Exchange, Inc., (hereinafter “Respondent”) failed to make full payment promptly to 30 sellers of the agreed purchase prices in the total amount of \$ 419,418.00 for 113 lots of perishable agricultural commodities which it purchased, received, and accepted in interstate and foreign commerce.

A copy of the complaint was served upon Respondent which Respondent has not answered. The time for filing an answer having expired, and upon motion of the Complainant for the issuance of a Default Order, the following Decision and Order shall be issued without further investigation or hearing pursuant to Section 1.139 of the Rules of Practice (7 C.F.R. § 1.139).

Findings of Fact

1. Respondent is a corporation organized and existing under the laws of the State of Florida. Its business address while operating was Plant City State Farmers Market, 1307 West Martin Luther King, Jr., Boulevard, Plant City, Florida 33566. Its mailing address was P.O. Box 5126, Plant City, Florida 33564. Its current address is c/o Shari S. Jansen, Trustee, P.O. Box 49974, Sarasota, Florida 34230.

2. At all times material herein, Respondent was licensed under the provisions of the PACA. License number 991398 was issued to Respondent on August 6, 1999. This license terminated on August 8, 2001, pursuant to Section 4(a) of the PACA (7 U.S.C. § 499d(a)), when Respondent failed to pay the required renewal fee.

3. During the period June 2000 through February 2001, Respondent purchased, received, and accepted in interstate and foreign commerce, from 30 sellers, 113 lots of fruits and vegetables, all being perishable agricultural commodities, but failed to make full payment promptly of the agreed purchase prices, in the total amount of \$ 419,418.00.

Conclusions

Respondent’s failure to make full payment promptly with respect to the 113 transactions set forth in Finding of Fact No. 3 above, constitutes willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), for which the Order below is issued.

Order

A finding is made that Respondent has committed willful, flagrant and repeated violations of Section 2(4) of the Act (7 U.S.C. § 499b(4)), and the facts and circumstances of the violations set forth above shall be published.

This order shall take effect on the 11th day after this Decision becomes final.

Pursuant to the Rules of Practice governing procedures under the Act, this Decision will become final without further proceedings 35 days after service hereof unless appealed to the Secretary by a party to the proceeding within 30 days after service as provided in Sections 1.139 and 1.145 of the Rules of Practice (7 C.F.R. §§ 1.139 and 1.145).

Copies hereof shall be served upon the parties.

[This Decision and Order became final March 12, 2002.-Editor]
